?IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28/10/2004

Coram

The Hon'ble Mr.JUSTICE K.GOVINDARAJAN
and
The Hon'ble Mr.JUSTICE A.KULASEKARAN

Writ Appeal No.3680 of 2004
and
Writ Appeal No.3681 of 2004

The Special Officer
Vellakovil Primary Agricultural
Co-op.Bank,
Vellakovil, Erode District
.. Appellant in both appeals

-vs-

C.Poongodi .. Respondent, W.A3680/04.

1.S.Shanmugasundaram

2.The Chairman, Common Cadre Authority/
Joint Registrar of Co-op. Societies
Erode Region, Erode
Erode District
.. Respondents, W.A.3681/04.

Writ Appeals under Clause 15 of the Letters Patent, against the
order passed in W.V.M.P.Nos.1695 and 1694 of 2004 in W.P.Nos.24704 and 24
703 of 2004, dated 22.9.2004, on the file of this court.

!Mr.Vijay Narayan, : For appellant in both appeals
Senior Advocate for
Mr.T.Ravichandran

^Mr.C.Prakasam : For respondent in W.A.3680/04

Mr.G.Rajagopalan, : For 1st respondent in W.A.3681/04
Senior Advocate, for
Mr.C.Prakasam

:COMMON JUDGMENT

K.GOVINDARAJAN,J.

The above writ appeals are preferred against the order passed by the learned Single Judge making the interim stay absolute while dismissing the petition to vacate the interim order.

2. While the writ petitioners were working as cashier and Secretary of the 2nd respondent-society, they were placed u
and by the order dated 12.8.2004. The same were challenged by the writ petitioners. The learned Judge granted interim orders staying the said orders of suspension. The appellant filed petitions to vacate the said interim orders. While considering these petitions, the learned Judge in the order dated 22.9.2004 made the interim orders absolute and dismissed the petitions to vacate the interim orders. Aggrieved against the same, the above writ appeals are pre

3. Learned Senior Counsel appearing for the appellant-cooperative bank submitted that in so far as the requirements as contemplated under Sec.76 of the Tamil Nadu Co-operative Societies Act, 1983, hereinafter called 'the Act', are concerned, the same had been complied with and so the learned Judge is not correct in making the stay absolute especially suspension orders were passed on serious charges. He also relied on the judgment of the Division Bench delivered in W.A.Nos.1209 and 1210 of 2004, dated 6.4.2004 to support his submission to sustain the impugned orders of suspension. According to him, the orders of suspension are with effect from 12.8.2004 F.N., as mentioned in the orders and it will be in effect pending enquiry. Since both the requirements as contemplated under Sec.76 of the Act are complied with, the learned Judge should not have made the stay absol

4. Learned Senior Counsel appearing for the 1st respondent in W.A. No.3681/2004 submitted that when the statute contemplates specific requirement and if the same is not complied with, the said order cannot be sustained. According to him, the period for which the suspension was made has not been specified as required under Sec.7
effect is mentioned. According to him, the Division Bench judgment relied on by the learned counsel for the appellant has no application to the facts of the present case, as rightly found by
order of the learned Single Judge need not be interfered with. The learned counsel for the respondent in W.A.No.3680/2004 adopted the said argument.

5. We have considered the facts and the arguments advanced by the learned counsel on both sides.

6. The writ appeals are against the order passed by the learned Single Judge while disposing of the stay petitions. In view of the arguments advanced by the learned counsel on both sides, it has become necessary for us to deal with the sustainability of the orders of suspension.

7. The general principle is that an employer can suspend an employee pending an enquiry into the misconduct . It is well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. The Government, like any other employer, would have the right to suspend a public servant in any one of the two ways. They may suspend any public servant pending departmental enquiry or pending criminal proceedings, which can be called interim suspension. The Government may also proceed to hold the departmental enquiry and if he is found guilty, the order of suspension can be passed as a punishment, if the Rules so permit, which is by way of penalty.

8. In the present case, we are concerned only with the interim suspension as contemplated under Sec.76 of the Act. It is beneficial to extract the same hereunder:-

"76. Suspension of a paid officer or servant of society:- (1) Where -
(a) in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82, or inspection of books under section 83, it is brought to the notice of the Registrar that a paid officer or servant of a registered society whether or not he is borne on a common cadre of service has committed or has been otherwise responsible for misappropriation, breach of trust or other offences in relation to any registered society and if, in the opinion of the Registrar, there is a prima facie
against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interests of any such society or

(b) a complaint against any paid officer or servant of any registered society whether or not he is borne on a common cadre of service of any alleged commission of any other offence in
turpitude is pending investigation or trial and if, in the opinion of the Registrar, the suspension of such paid officer or servant is necessary in the public interest or in the interest of such society,
the Registrar may direct, where the paid officer or servant is borne on a common cadre of service the competent authority constituted under sub-section (3) of section 75, and in other cases, the registered society under which the paid officer or servants empl
such investigation, trial and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him.

(2) On receipt of a direction from the Registrar under subsection (1), the competent authority or the registered society, as the case may be, shall, notwithstanding any provision to the contrary in the rules or the by-laws or the order under sub-section (1) of section 75, place or cause to be placed the paid officer or servant under suspension forthwith.
(3) The Registrar may direct the competent authority or the registered society, as the case may be, to extend or cause to be extended,

from time to time, the period of suspension and the paid officer or servant suspended shall not be reinstated except with the previous sanction of the Registrar.
(4) Notwithstanding anything contained in sub-section (2) and (3) and without prejudice to the provisions contained in section 88, if, in the opinion of the Registrar, the competent authority or any registered society, as the case may be, either wilfully disobeys or wilfully fails t comply with any direction, issued under sub-section (1) or sub-section (3), he may, by order, place or cause
paid officer or servant under suspension forthwith or extend or cause to be extended from time to time, the period of suspension of such paid officer or servant."

9. Exercising the powers contemplated under sub-section 76(1)(b) of the Act, the appellant and the 2nd respondent pas
suspension dated 12.8.2004, which read as follows:-

(VERNACULAR PORTION DELETED)

10. The issue raised in this case is that the concerned authorities have not specified the period during which the wr
the orders of suspension. According to the learned Senior Counsel appearing for the appellant, with respect to the order of suspension made against S.Shanmugasundaram, the Secretary, it is specifically stated that the order of suspension was pending enquiry and so the requirement has been complied with. With reference to another order of suspension mentioned above, learned Senior Counsel submitted that the same was passed under the bye-law and so such a period need not be mentioned.

11. Before dealing with the said issue, it is necessary for us to deal with the power of this court, to give interpretation to the intention of the Legislature. It is well settled that the court cannot read anything into the statutory provision or rewrite a provision which is plain and unambiguous. The language employed in a
intent of policy makers. The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As held in Institute of Chartered Accountants of India v. Price Waterhouse, AIR 1998 S.C. 74, words and phrases are symbols tha
mental references to referents and the object of interpreting a statute or any statutory provision is to ascertain the intention of the Legislature or the Authority enacting it. As held in The State of Gujarat & Ors., v. D.N.Patel & Anr., JT 1998 (2) S.C. 253,
the legislature's defective phrasing of an Act, nor can add or mend and by construction make up deficiencies which are left there. As held in Jumma Masjid Mercara v. Kodimaniandra Deviah, AIR 1962 SC 847,
Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear
reason for it is to be found within the four corners of the Act itself. In CST v. Popular Trading Co.

(2000)5 SCC 511, it is
cannot legislate it. If a provision of law is misused and subjected to
the abuse of process of law, it is for the Legislature to amend,
modify or repeal it, if deemed necessary. The legislative casus omissus
cannot be supplied by judicial interpretative process.

12. While considering the scope of Sec.6 of the Land Acquisition
Act, the Apex Court in the decision in Padmasundara Rao v. State of T.N., AIR 2002 SC 1334, has held as follows:-

"14.Two principles of construction - one, relating to casus omissus
and the other in regard to reading the statute as a whole - appear
to be well settled. Under the first principle a casus omissus cannot
be supplied by the Court except in the case of clear necessity and
when reason for it is found in the four corners of the statute itself
but at the same time a casus omissus should not be readily inferred
and for that purpose all the parts of a statute or section must be
construed together and every clause of a section should be construed
with reference to the context and other clauses thereof so that the
construction to be put on a particular provision makes a consistent
enactment of the whole statute. This would be more so if literal
construction of a particular clause leads to manifestly absurd or
anomalous results which could not have been intended by the Legislature. "
An intention to produce an unreasonable result," said Danckwerts,L.J., in Artemiou v. Procopiou
(1966 1 QB 878, "is not to b
a statute if there is some other construction available." Where to
apply words literally would ''defeat the obvious intention of the
legislation and produce a wholly unreasonable result' we must ''do some
violence to the words'' and so achieve that obvious intention and
produce a rational construction. (Per Lord Reid in Luke v. I.R.C. (1966
AC 557) where at p.577 he also observed: "this is not a new problem,
though our standard of drafting is such that it rarely emerges.")
15.The plea relating to applicability of the stare decisis
principles is clearly unacceptable. The decision in K.Chinnathambi Gounder (
supra) was rendered on 22.6.1979 i.e., much prior to the amendment by the 1984 Act. If the
Legislature intended to give a ne
life in those cases where the declaration under S.6 is quashed, there
is no reason why it could not have done so by specifically providing
for it. The fact that legislature specifically provided for periods
covered by orders of stay or injunction clearly shows that no other
period was intended to be excluded and that there is no scope for
providing any other period of limitation. The maxim 'actus curia neminem gravibit' highlighted by
the Full Bench of the Madr

On the basis of the above principles laid down in the said
decisions, now we have to consider the submissions made before this court by both the learned
Counsel.

13. Though learned Senior Counsel appearing for the appellant
submitted that with respect to the respondent in W.A.3680/2004, Section 76 of the Act has no
application, the same cannot be

reading of the Section, it is clear that even with respect to an employee who is not in common cadre, the same has to be applied and the conditions contemplated therein have to be complied with. In the order of suspension which is the subject matter in W.A.3680/2004, nothing has been mentioned with respect to the period for which the respondent was placed under suspension.

14. Even in the order of suspension, which is the subject matter in W.A.3681/04, no such period is mentioned. Learne
appearing for the appellant relying on the English translation in the typed set, submitted that since the suspension order is passed pending enquiry, it has to be taken that the period of suspens
the enquiry was over. Such a submission cannot be accepted, as in the original order which is in Tamil, it is mentioned as @rl;lg{h;t tprhuiz epYitapy; cs;s epiyapy;@, which indicates the basis for passing the order of suspension, and it cannot be taken as period for which Mr.Shanmugasundaram was suspended. It is not disputed before us by the learned Senior Counsel appearing for the appellant that the period for which the suspension was made has to be mentioned in the order of suspension. But he tried to interpret the orders of suspension as stated above. Such interpretation cannot be accepted w

the section is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the acts speak for itself. So, the said provision has to be understood in the natural and ordinary sense.

15. In the second para of sub-rule(1)(b) of Sec.76 of the Act, it is stated that such order of suspension can be made only in certain circumstances, namely, "pending such investigation, trial and

disposal of the matter". So mere stating in the order of suspension as it has been made pending enquiry, it cannot be said that it denotes the period for which the suspension is made.

16. The above said conclusion of ours is strengthened by sub-section(3) of Sec.76 of the Act also. It gives to an authority powers to extend the period of suspension. Unless the period of suspension is for specific period, the question of extension does not arise. So the intention of the legislature is clear that the order o
should be made by the competent authority or the society as the case may be, pending investigation, trial and disposal of the matter, and such order of suspension should mention the date on which the order comes into effect and the specific period during which the officer or servant was placed under suspension.

17. From the above, it is clear that the orders of suspension impugned in the writ petitions have not been issued in compliance with the requirements under Sec.76(1)(b) of the Act as the

stipulated. As rightly submitted by the learned Counsel for the respondents, the judgment of the Division Bench in W.A.1209 and 1210 of 2004, dated 12.1.2004 deals with the date on which th
has to be mentioned in the order of suspension.

18. But on that ground alone, the impugned orders of suspension need not be held invalid as the error committed by the authorities can be rectified by issuing suitable orders, as the source of powers to the authorities who passed the impugned orders, can be validly traced. The error pointed out by the writ petitioners does no
right of the writ petitioners. This conclusion is arrived at in view of the fact that the orders of suspension passed by the authorities, pending enquiry are not punishment, but they are issue
have proper investigation and enquiry in the matter.
19. While dealing with the powers of the court under Article 226 of the Constitution of India in giving positive directions to the authorities to make the law or order valid the Apex Court in I.T.C. Ltd. And others v. State of Karnataka and others 1985 Sup
held as follows:-

195 "Courts of today cannot and do not any longer remain passive with the negative attitude, merely striking down a law or preventing something being done. "Thou shall not do't" used to be the previous form of remedy encouraged by Courts. But the new attitude is towards positive affirmative actions, directing people or authorities concerned that "thou shall do't" in this manner. While it is true that if a law is bad, the Court must strike it down, if the law by and in its true perspective of a social purpose if implemented in a particular manner could be valid, then the Court can and should ensure that implementation should be done in such particular manner and give directions to that effect. In the instant case the High Cou
with which finding we are in agreement, that basically and essentially the fee was justified on the theory of quid pro quo,
entitled to give positive direction in the manner the money should be spent."

20. If the law requires to fulfil certain conditions to make an order valid and if the same are not complied with there is no option or alternative but to issue a writ. But if there is no legal impediment in rectifying the mistake and complying with the condition, issuance of writ to quash that order is nothing but futile, but the concerned authority can be directed to rectify the same. This view of ours is supported by the decision of Full Bench judgment of Delhi High Court in P.N.Lakhanpal v. Ajit Nath Ray, Chief Justice of India, New Delhi and others AIR 1975 Delhi 66 in which it is held as follows:
"If the law requires that the appointment is to be made after fulfilling certain conditions, and if such conditions are incapable of being fulfilled there is no option or alternative but to issue a writ of quo warranto. It is only in a case where the requir
capable of being fulfilled and there is no legal impediment in the way of such fulfilment that the principle of futility of the writ on

the ground that the holder of the office could be immediately re-appointed is attracted."

21. The Apex Court in D.G. and I.G. Of Police, V. K.Ratnagiri reported in 1990(3) SCC - 60 had dealt with the order of suspension in which it is mentioned as "pending prosecution" instead of "pending investigation" into the charges. While considering such order of suspension, the Apex Court in the said decision held that the order of suspension cannot be said to be beyond the scope of the relevant rule, merely because it has used the word "prosecution" instead of " investigation" into the charges against the respondent and a wrong word in the order does not take away the power if it is otherwise available.

22. So, the learned Judge, instead of staying the said orders, ought to have given opportunity to the appellant to rectify the mistake, as suggested earlier.

23. In view of the above discussion, we are inclined to set aside the order dated 22.9.2004 passed by the learned Judge making the stay absolute and accordingly, the same is set aside and con
these writ appeals are allowed. The appellant is directed to issue suitable orders, rectifying the mistake as mentioned earlier, within two weeks from today, failing which, the order of the learned single Judge staying the orders of suspension will be restored. No costs. W.A. M.P.Nos.6962 and 6963 of 2004 are also dismissed.

Index :yes
Internet:yes
sks

To

The Chairman, Common Cadre Authority/
Joint Registrar of Co-op. Societies
Erode Region, Erode
Erode District.

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